

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN MCBRIDE,)	
)	
Plaintiff,)	Civil Action No. 15-867
)	
v.)	Judge Cathy Bissoon
)	
ALLY FINANCIAL, INC.,)	
)	
Defendant.)	

ORDER

The pending Motions in this case are resolved as follows. First, Defendant’s Motion to file a surreply (**Doc. 25**) – which, in reality, seeks leave to file a *reply* brief – is **GRANTED**, but only to the extent that the Court has considered the contents of said Motion for the purposes of ruling on Defendant’s underlying stay-request. In other words, Defendant’s request to file even more briefing (*see id.* at 3) is denied.

Second, Defendant’s Motion (**Doc. 20**) to stay this case pending the Supreme Court’s decision in *Spokeo, Inc. v. Robins* is **DENIED**. Assuming, without deciding, that defense counsel’s underlying legal premises are correct, Plaintiff already has alleged sufficient facts to support a plausible claim of injury-in-fact. *See* Compl. (Doc. 1) at ¶¶ 12, 30 (seeking “actual damages,” and alleging that Plaintiff’s cellular telephone service “incurs . . . charge[s] for incoming calls”).¹ Plaintiff’s allegations of actual damage distinguish this case from the one

¹ To the extent that Defendant complains of Plaintiff’s having attempted an impermissible amendment of the pleadings through his briefing, the Court notes that the CMO-deadline for motions to amend has not yet expired. *See* Def.’s Reply (Doc. 25) at 1-2 (noting assertions in briefing, not stated in Complaint, that Plaintiff also seeks compensation for “invasion of privacy, annoyance, inconvenience and harassment”); *see also* CMO (Doc. 15) at ¶ 3 (deadline for motions to amend pleadings is Feb. 26, 2016). Although it would appear, in light of the rulings

before Judge Hornak in Duchene v. Westlake Services, L.L.C., 2015 WL 5947669 (W.D. Pa. Oct. 13, 2015). *See id.*; *see also* Compl. in Duchene, Doc. 1 in Civil Action No. 13-1577, at ¶¶ 42, 47 & Wherefore clause (claiming statutory damages only).

Finally, given the pendency, until now, of Defendant's request for a stay, the consented Motion (**Doc. 27**) to extend the ADR-deadline is **GRANTED**. The deadline for ADR is extended until **February 12, 2016**, and the other deadlines in the CMO remain unaffected.

IT IS SO ORDERED

January 12, 2016

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record

above, that additional averments of injury-in-fact are unnecessary, the decision whether to seek leave to amend is a matter reserved to the judgment of Plaintiff's counsel.